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Recommendations of the Forum on Minority Issues at its eighth session: Minorities and the criminal justice system (24 and 25 November 2015)

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I. Introduction

1. In accordance with Human Rights Council resolutions 6/15 and 19/23, the present document contains the recommendations of the Forum on Minority Issues. The eighth session was held on 24 and 25 November 2015 and considered the theme of "Minorities in the criminal justice system". The work of the Forum was guided by the Special Rapporteur on minority issues, Rita Izsák. The Chair of the session was Joshua Castellino of India. More than 500 participants attended, including representatives of Member States and minority communities, non-governmental organizations, United Nations specialized agencies, regional and intergovernmental bodies and national human rights institutions.

2. The recommendations contained in the present document are based primarily on the provisions contained in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. In the Declaration, it is recognized that the comprehensive implementation of minority rights and the existence of adequate institutional and policy frameworks can effectively contribute to the elimination of all forms of discrimination against members of minority communities, as well as promote their full equality before the law without any discrimination.

3. The recommendations are also based on existing human rights standards, international and regional instruments, principles and guidelines concerning the fairness and effective safeguarding of minority rights at all stages of the criminal justice process, including the jurisprudence and general comments of United Nations treaty bodies and relevant reports and recommendations of different special procedure mandate holders.

4. The recommendations take into account the great variety of legal systems and minority situations around the world and acknowledge that the patterns of violations of the rights of minorities may vary between systems and that, consequently, different measures may be required to protect minority rights throughout the criminal justice process within a given State. The present document makes no claim to study the diversity of national criminal justice systems nor does it explore how specific systems may generate or accentuate particular forms of discrimination against minorities.

5. The recommendations aim to provide State authorities, decision makers, public officials, minority groups, non-governmental organizations, academics and other stakeholders with an overview of some of the key challenges for minorities in relation to various stages of the criminal justice process and proposes some concrete solutions thereto.

II. General considerations

6. The recommendations proposed in the present document should be read in conjunction with the substantive and action-oriented recommendations formulated at the seven previous sessions of the Forum on Minority Issues, as they also apply to situations in which discrimination in the criminal justice system is to be prevented and addressed.

7. In particular, participants at previous sessions of the Forum addressed some of the most fundamental, long-standing concerns and entrenched challenges that minorities face in their access to fundamental economic, social, cultural, civil and political rights, depriving them of the opportunity to contribute fully and on an equal footing to the socioeconomic and political life of the State. The present recommendations acknowledge the importance of addressing the systemic nature of social and economic exclusion and political marginalization, including institutionalized discrimination against minorities, as an essential element in the complex matrix between exclusion and criminal behaviour. The recommendations therefore recognize that States must invest in initiatives, including early

intervention programmes, to combat social, economic and political disadvantage of minorities. In that regard, States should also consider taking special measures for minority groups.

8. It is important to recall that, a gender-sensitive approach to the implementation of laws, programmes and measures relating to women from minorities is imperative, given that, in the various stages of the criminal process, including in the prisons of virtually all countries, minority women and girls may be exposed to multiple and intersecting forms of discrimination, irrespective of their status as victims, perpetrators or witnesses.

9. Measures to address the needs and rights of children from minorities should also be implemented, in accordance with international standards on juvenile justice and protection for children's rights.

10. All measures taken with a view to implementing the recommendations should be, to the fullest extent possible, developed, designed, implemented, monitored and evaluated in consultation with and with the effective participation of minorities, including women.

11. Recognition of minority status should not be left solely to the State to decide. As stated in the authoritative interpretation by the Human Rights Committee in its general comment No. 23 (1994) on the rights of minorities (para. 5.2), the existence of minorities should be established using objective criteria. Every effort should be made to ensure that the principle of self-identification is respected.

III. General recommendations for States

12. Regardless of the criminal law of a particular State, or the procedures followed (adversarial, inquisitorial or combined), international law requires States to ensure that all individuals within their jurisdiction enjoy their fundamental rights throughout the criminal justice system: the right to a fair trial by a competent, independent and impartial court established by law, and the right to legal aid; the presumption of innocence; the principle of legality and non-retroactivity of more stringent criminal laws; the principle of double jeopardy; the prohibition of torture and cruel, inhuman or degrading treatment, and the inadmissibility of confessions obtained by torture or the use of cruel, inhuman or degrading treatment; and the right to liberty and security of person, the prohibition of imprisonment for civil debt and the due process required to protect these rights.

13. States should take measures that specifically promote the equal treatment of minorities within the criminal justice system. For the criminal justice system to remain viable, society must be confident that, at every stage of the process, from initial investigation by the police of a crime, to prosecution and punishment, individuals in similar circumstances are treated alike, in compliance with the fundamental guarantees of equal treatment under the law.

14. States, in collaboration with representatives of minorities, should aim at dismantling discriminatory mechanisms within the criminal justice system, including by detecting and addressing de jure discrimination in legislation relating to matters of substance and/or procedure, and indirect discrimination that may arise from laws, policies or practices that are ostensibly neutral but have a discriminatory outcome in practice. Further studies to determine the nature and scope of the problem and the implementation of national strategies or plans of action aimed at the elimination of discrimination, including institutional discrimination against minorities, should be encouraged.

15. Comprehensive implementation of international standards of minority rights protection, equality and non-discrimination is the foundation for any action or initiative aimed at preventing and addressing discrimination against minority groups at all stages of

the administration of justice. Although most States have general legislation to this effect, minorities are often caught between formal equality before the law and the courts and structural discrimination that manifests itself through distinctions, exclusions, restrictions or preferences that result in differential treatment and the accentuation of inequalities.

16. Effective counter-terrorism measures and the protection of human rights, including minority rights, are complementary and mutually reinforcing objectives that must be pursued together as part of States' duty to protect individuals within their jurisdiction. Therefore, States should ensure that all counter-terrorism measures, including anti-terrorism legislation and increased police, military and intelligence operations, comply with international human rights standards and do not disproportionately target members of minority communities or groups purely on the basis of minority identity or membership or perceived membership in a minority group.

IV. Thematic recommendations for States

A. Data collection and studies

17. The failure of many States to collect and analyse data that is sufficiently disaggregated remains a fundamental barrier to progress in the area of combating discrimination against minorities in the criminal justice system. This lacuna impedes the production of qualitative and authoritative diagnoses that provide objective information regarding the involvement of persons belonging to minority groups in all aspects of the administration of justice. While data can highlight existing challenges for States in specific areas of the administration of criminal justice, it can also be used as an important indicator of progress achieved by States.

18. Data should be collected and used with due consideration for the principles of self-identification and consent. In that regard, it is important to recognize that how an individual defines themself may be very different to how government officials or researchers may define them. In keeping with international best practice, respondents should always be given the option of indicating multiple or no ethnic affiliations. This is particularly important in law enforcement operations, which carry the genuine risk of the misuse of ethnic data to facilitate racial and ethnic profiling. Furthermore, since the perception of the mainly majoritarian law enforcement officers has often been found to drive racial profiling, such perceptions should be part of the data collected.

19. States should ensure that robust guarantees for data protection and disclosure control measures are in place. The nature of the data to be collected should be based on public participation and understanding of the implications of how such data could potentially be used. To this end, States should consider establishing appropriate data protection institutions or bodies with supervisory authority to ensure that the process of collection, recording, storing, retrieving, sending, blocking or erasing data upholds the strict privacy rules governing these activities.

20. States should ensure that such data and studies are made publicly available and can be easily interpreted and accessed by all potential users, including minority individuals and groups.

21. States should generate adequate protocols to treat data that demonstrate that certain minority groups are overrepresented among persons arrested and imprisoned for criminal offences, in order to ensure the data do not propagate negative stereotypes that associate minority identity with criminality. This is important as overrepresentation of minorities in

criminal justice systems often have more to do with structural discrimination and factors such as overpolicing of minority communities.

22. States should develop a comprehensive set of standardized tools, including computerized systems, that will assist them in evaluating the performance of their criminal justice institutions against a set of objective standard criteria. Such criteria should include: the type of rights violated at all stages of the criminal justice processes; the relevant characteristics or status of the victims, including gender, and perpetrators, i.e. State agents, private companies or individuals; the place and time of violations; and outcome of the redress process, i.e. conviction, sentence and compensation. States should pay due attention to the possibility that State agents perceive, either through training or implicit bias, that minorities are more likely to be engaged in criminal activity than non-minorities, and collect data to interrogate such perceptions.

23. States should systematically classify complaints and reported cases of alleged violations against minorities to support follow-up and allow for cross-sectional comparisons over time and across the criminal justice system. To that end, States should consider establishing coordinating committees or dedicated teams composed of representatives from key criminal justice agencies to ensure that information on a case is exchanged in a confidential, timely and efficient manner throughout the system and make sure that all information on a case is computerized and simple to analyse.

24. States are encouraged to conduct crime victimization surveys (or victim surveys), which allow for a broader representation of crimes, including unreported crimes, and may reveal specific details about victims and their experience of the criminal justice system, offenders, and other characteristics of criminal incidents. This will enable a better understanding of crime, including implications for minorities. The United Nations Office on Drugs and Crime (UNODC) and the United Nations Economic Commission for Europe *Manual on Victimization Surveys* provides practical guidance on carrying out such surveys, framing questions concerning police reporting rates, methods of data analysis and modalities for the presentation of findings that are relevant to the situation of minorities.

25. States should consider conducting court user surveys to better understand user experiences of courts. Such tools have proved effective in detecting the impact of backlogs, delays in the delivery of justice outcomes, incidents of external pressure being applied, corruption, lack of adequate resources or other aspects that particularly impact minorities. Such surveys may trigger policy interventions and strengthen the capacity of the justice sector agencies in terms of planning and budgeting, monitoring, high-level advocacy and cross-sectoral dialogue, as well as in addressing the expectations of all sectors of society, including minorities, revealing barriers to such expectations and offering the opportunity of greater accessibility to the criminal justice system.

26. States should collect and make public data on the composition of law enforcement personnel and the judiciary, disaggregated by gender, ethnicity, profession and numbers in each role, in order to provide policymakers and justice professionals with a practical and detailed tool to better understand the constituents of the criminal justice system. This would enhance transparency, may lead to greater public confidence in the criminal justice systems and improve fairness and equality of opportunity, ultimately improving the efficiency and quality of the criminal justice system.

27. States should encourage and support non-governmental organizations, academic institutions and researchers in undertaking independent studies on the situation of minorities in the criminal justice system. States should ensure the removal of legislative or bureaucratic obstacles that may hamper the research, production and publication of such studies.

B. Access to justice for minorities

1. Minorities and law enforcement and policing operations

28. Discrimination against minorities in law enforcement operations can take the form of overpolicing and underpolicing. Overpolicing is often manifested through racial profiling, leading to higher rates of arrest, detention and sentencing.[1] It is often accompanied by the criminalization of social protest by minority groups, which leads to high rates of pre-charge detention and release, a phenomenon not often reflected in official data on criminal processes, when such data is collected.[2]

29. Underpolicing often occurs where law enforcement authorities fail to take appropriate action in investigating and prosecuting crimes committed against minorities (see sect. C below) and fail to take appropriate action regarding hate speech or hate crimes committed against minorities. Overpolicing and underpolicing remain problematic: contributing to the overrepresentation of minorities in the criminal justice system, while fostering a lack of trust among minorities in criminal justice processes.

30. States should enact legislation explicitly prohibiting and punishing the questioning, searching and arrests of individuals based solely or primarily on their physical appearance, or the perceived membership of an individual as belonging to a minority group, through racial and/or ethnic profiling by law enforcement agencies.

31. States should provide detailed and practical guidance, including through operational protocols, codes of conduct and regulations and training, for all law enforcement officers on how to ensure the impartial and non-discriminatory application of the law and to avoid singling out any particular minority group in police and security operations for all types of crimes.

32. In areas and regions where racial profiling by law-enforcement is prevalent, States should consider introducing community liaison officers including women, or other outreach mechanisms from or with connections to relevant minority communities. Communities should be made aware of the existence of these mechanisms, their right to lodge a complaint and how and where to file complaints.

33. States should develop protocols and codes of conduct for law enforcement agencies for the investigation of hate crimes, including hate speech, incidents and violent crime. Such tools can promote early detection of incidents, helping ensure that situations do not escalate.

34. Minority groups, particularly disadvantaged and stigmatized minorities, may be disproportionately subjected to human rights violations at the hands of law enforcement officers, ranging from pervasive verbal abuse and harassment during public assemblies and overpolicing of minority social protests to use of excessive force, torture and inhuman or degrading treatment during arrest and interrogation, extrajudicial killings and death in custody. States should ensure that rules on the use of force by the police respect general principles of proportionality and necessity in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and that intentional use of lethal force is restricted to situations where it is unavoidable to save life. The Principles should

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[1] See report on racial and ethnic profiling of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/HRC/29/46).

[2] See the report on threats against groups most at risk when exercising assembly and association rights of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/26/29).

guide law enforcement officials when managing assemblies: restricting the use of force to circumstances of absolutely necessity, while ensuring that no one is subject to excessive or indiscriminate use of force. In accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, all places of detention by law enforcement should be subject to oversight and monitoring.

35. States should allocate sufficient resources to independently document, investigate and prosecute, promptly and thoroughly, all allegations of discrimination, or use of lethal or excessive or otherwise unlawful force by law enforcement officers against minorities. Military institutions such as military police forces that often operate under separate legal regimes should not be exempt from such investigations. Private security companies contracted to carry out law enforcement functions should be subject to the same standards and be investigated in case of any alleged discriminatory or abusive behaviour against minorities.[3]

36. New technologies, such as video capabilities, handheld devices and closed-circuit televisions, provide new avenues for civilian monitoring of law enforcement behaviour and can be useful advocacy tools for minority communities in exposing violations in encounters with law enforcement authorities. Attention should be paid to how these can be used to ensure accountability and justice for minorities.

2. Access to justice for minority offenders

37. States should ensure equal and effective access to justice and accountability measures for minority offenders. States should ensure that members of minorities are fully informed, in a language and means appropriate to their situation, of their rights as offenders, and should secure access to support, including competent legal assistance and interpretation services.

38. In accordance with the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (para. 8), States should ensure access to legal aid as an essential element of a fair, humane and efficient criminal justice system based on the rule of law. Legal aid should include legal advice, assistance and representation, legal education and access to legal information and should be provided at no cost to minority offenders without discrimination when they do not have sufficient means or if it is in the interests of justice. This is particularly important in the early stages of the criminal justice process as actions taken or lack thereof will determine an offender's ability to enjoy other human rights, such as rights to a fair trial, equality before the law or to liberty and security of person and to an effective remedy.

39. States should develop, in close consultation with key stakeholders, such as bar associations, law enforcement authorities, prosecutors, the judiciary, non-governmental organizations and civil society organizations, a national strategy for legal aid that identifies the need for such aid, with due regard for minority communities and individuals, especially those most marginalized and vulnerable to abuse. Such a strategy should also outline how best to appropriately deliver legal aid according to those needs.

40. States should develop and promulgate professional codes of conduct for legal aid providers, including lawyers, paralegals and those institutions providing legal aid services, that specifically incorporate international human rights standards for the protection of the

[3] See UNODC *Handbook on State Regulation concerning Civilian Private Security Services and their Contribution to Crime Prevention and Community Safety*. Available at www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Ebook0.pdf.

interests of clients, including the duty to act with integrity and independence, as well as a duty to act impartially, regardless of their background, origins or beliefs.

3. Investigation into crimes committed against minorities – minorities as victims

41. States should remove all obstacles preventing minority victims, including those most vulnerable within the community, such as women, children, persons with disabilities, older persons, minorities living in extreme poverty and minorities affected by conflict or displacement, from reporting a violation of their rights and accessing formal justice.

42. Law enforcement authorities, prosecutors and judicial authorities must ensure that criminal complaints by members of minorities are pursued with the same rigour and diligence applied to other complainants. States should guarantee that the criminal justice system promotes a climate of trust between minorities and State authorities and does not tolerate the promotion of a culture of impunity, which may encourage further crimes, including violence, against minorities.

43. States should consider establishing dedicated, specialized units within existing prosecution agencies, in order to respond to crimes that are particularly challenging to detect and prosecute, and which have a particularly serious impact on minority victims and society as a whole, including hate crimes or gender-related killing of women, including minority women.

44. Police should take steps to encourage the reporting of crimes against minorities, including racially or ethnically motivated violence by non-State actors, ensuring that these are fully recorded and thoroughly investigated. Where ethnic tensions and/or violence against minorities has previously occurred, States must ensure that authorities effectively and promptly investigate crimes against minority individuals and communities, including by examining any alleged discriminatory motive for the crimes.

45. States should ensure that minority victims have an enabling environment in their access to formal justice by guaranteeing their personal safety and security and identifying and overcoming legislative, administrative, social or cultural barriers that minorities, especially women, may face in exercising their access to justice. Such barriers may include onerous and discriminatory rules of evidence and procedural requirements, fear of reprisal by perpetrators of the crime, owing to a lack of confidence that authorities will protect minority victims, and fear of being stigmatized by their own and/or other communities.

46. States should guarantee effective measures to ensure the effectiveness of the criminal justice system by informing minority victims, witnesses or offenders of their rights and progress in their case, engaging with their views at appropriate stages of proceedings, assisting them through the process and taking effective protection measures, while avoiding unnecessary delay. States should investigate and punish officials who neglect their duties in that respect and tackle underlying bias, including structural discrimination, that impinges minorities' experience of the justice system.

47. The criminal justice system must be sensitive to the ways in which persons may be deliberately targeted on the basis of their nationality, ethnic, religious or linguistic identity. Targeting, which often includes violence, causes long-lasting harm. The criminal justice processes should instead be aimed at empowering minority victims in access to justice, supporting rehabilitation and reparations, restoring their dignity and building mutual trust.

48. States should specifically ensure the availability of remedies for minority women victims of gender-based violence, who may face multiple stigma and intersecting forms of discrimination with regard to their minority origin (including caste), their gender and the nature of the crime suffered. Gender sensitization is crucial in enabling government and law enforcement officers to understand minority women's challenges within their communities,

including forms of abuse often classed as cultural practices, including forced and early marriages or female genital mutilation, so they can assist in establishing appropriate platforms to report and prevent such violations.

49. States should ensure that mechanisms to provide advice, support and rehabilitation for victims of crime are equally accessible to and effective for persons belonging to minorities and are culturally adapted, where necessary.

50. States should recognize that minority victims of a criminal act may be exposed to secondary victimization if the responses of justice institutions fail to recognize their experience as victims. The overall process of criminal investigation and trial may cause revictimization because of: decisions on whether or not to prosecute, the thoroughness of investigation, the conduct of the trial itself, the sentencing of the offender and their eventual release. State actors responsible for ordering criminal justice processes and procedures should take the victim's perspective into account, within the context in which the crime against a minority individual or community has been committed.

4. Minority witnesses

51. There must be no discriminatory treatment by any criminal justice official arising from pernicious stereotypes, misinterpretation of expressions and behaviour or bias against witnesses from a minority background as being less credible or trustworthy.

C. Minorities in detention facilities

52. Systematic, institutionalized and structural discrimination in society may contribute to legitimizing and replicating discrimination, violence, torture and other cruel, inhuman or degrading treatment or punishment against minorities, including women and children, in the context of detention of minorities, and other forms of deprivation of liberty. States should prevent, investigate and punish acts of violence, harassment and abuse by staff members or other detainees against minority detainees and ensure that their physical and mental integrity and dignity are respected at all times, from the time of arrest until eventual release. States should ensure that discrimination, intimidation and victimization of minorities is not tolerated in places of detention. That can be achieved by promoting a culture of non-discrimination and equality, establishing mechanisms where staff and detainees can challenge discriminatory incidents and promoting good relationships between staff and detainees.

53. States that have not yet done so are urged to bring their national legislation and practice into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Particular attention should be paid of the principle of non-discrimination (rule 2) and the obligation to take measures to protect and promote the rights of prisoners with special needs. States should also ensure compliance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). These instruments represent the baseline standard, which all States should strive to achieve, in ensuring a basic level of protection for minority detainees.

54. All places of detention should be subject to unannounced visits by independent bodies established in conformity with the provisions and requirements of relevant international human rights standards, including the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and should include adequate representation of minorities. As the goal of detention monitoring bodies is preventative in nature, such bodies should strive to pay attention to the situation of minorities in detention. They should be afforded unhindered access to all detained minority

persons and be given access to the totality of case files, while maintaining the confidentiality of communications. States must ensure that all alleged acts of reprisals and intimidation before, during or after a visit of by an independent body are promptly, impartially and effectively investigated with perpetrators brought to justice, and victims provided with effective remedies. All reports into treatment and conditions of detainees made by independent bodies should be made public.

55. States are urged to adhere to the Nelson Mandela Rules, paying special attention to the adequate conditions of detention or imprisonment and staff awareness of the need for reasonable accommodation of cultural, dietary, religious and linguistic characteristics of minority prisoners.

56. Prison authorities should put in place detailed and practical guidance, through operational protocols, codes of conduct, regulations and training for the ongoing monitoring and analysis of discrimination against minorities with regard to access to services and rehabilitative programmes. This should include providing attention to accommodation, employment opportunities, health care, vocational training, education, disciplinary measures and the use of sports facilities, libraries and religious sites while detained, as well as access to temporary release and parole decisions. Complaints of direct or indirect discrimination in accessing these services or programmes should be documented, investigated and punished.

57. States should ensure that persons are informed of their right to legal aid and other procedural safeguards, as well as of the potential consequences of voluntarily waiving those rights prior to any interrogation and at the time of deprivation of liberty. Such information should be made accessible to the public.

58. States should pay special attention to and seek to reduce the detention of minorities in high-security institutions. The use of disciplinary measures, restrictive interventions or special security measures, such as administrative segregation, should be subject to clear procedures and regular monitoring and evaluation to ensure that these are not used disproportionately against members of minority groups.

59. As affirmed by the Nelson Mandela Rules, the treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it (rule 88). Those rights may have additional significance for members of minorities, for whom access to outside religious representatives or cultural groups may be as important as access to family and lawyers. States should guarantee that minorities deprived of their liberty are therefore able to maintain contact with their families and communities, including their religious and cultural leaders, by ensuring their placement in institutions close to their home, while ensuring that their visitors are not discriminated against by prison personnel and not exposed to disrespectful language or discriminatory attitudes, including deliberate use of intimate searching, sexual abuse or serious physical abuse and threat.

1. Pretrial detention

60. States should ensure that membership of a minority group is not a sufficient reason, de jure or de facto, to place a person in pretrial detention. Pretrial detention shall last no longer than necessary and be administered humanely, with respect for the inherent dignity of all individuals. Minority individuals charged with committing crimes who are placed in pre-trial detention facilities should have access to an effective legal aid system and exercise their right to appeal to a judicial or other competent independent authority in their case, without discrimination.

61. In accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), States should use pretrial detention as a means of last resort (with due regard for the investigation of the alleged offence and for the protection of

society and the victim) and encourage the use of alternative measures, such as release on bail or personal recognizance, ensuring that minorities are afforded the same conditions as other offenders.

2. Detention of minority women and girls

62. States should fully implement standards set forth in the Bangkok Rules to respond to the distinct needs and multiple forms of discrimination that minority women and girls in prisons may face. That includes assessment of their access to gender- and culturally relevant programmes and services in a wide range of aspects of the prison regime, such as health care, rehabilitation programmes and visiting rights. Prison authorities shall provide comprehensive programmes and services that address these needs, in consultation with minority women prisoners themselves, and the relevant communities, ensuring that pre- and post-release services are appropriate and accessible to minority women prisoners.

63. Prison services must provide for the full range of needs of children in prison with their mothers, whether medical, physical or psychological. As these children are not prisoners, they should not be treated as such. The Rules also require special provisions to be made for mothers prior to admission, so they can organize alternative childcare for children left outside places of detention.

3. Detention of children

64. In compliance with the Convention on the Rights of the Child, children must be detained strictly as a measure of last resort, in exceptional circumstances, and for the shortest appropriate period of time. Alternatives to detention should be given preference. In the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) are set out a variety of non-custodial options for children facing criminal charges, including "diversion" from detention, which keeps children in or channels them into age-appropriate processes or programmes in the community instead. In accordance with the recommendations of Committee on the Rights of the Child, the minimum age of criminal liability should start at age 18.[4]

65. States should ascertain whether juveniles from religious, ethnic, national or linguistic minority communities are incarcerated at a disproportionately higher rate than their representation in the overall population. In such cases, they should create and implement robust crime prevention programmes providing alternative measures to incarceration, focusing on rehabilitation while emphasizing imprisonment as a last resort.

D. Judicial proceedings and sentencing

66. Whatever the character or customs of a court, States must ensure their full compliance with international human rights standards, especially equality before the law, and the guarantee of a fair trial by a competent, independent and impartial tribunal under the rule of law.

67. States should ensure that accused minority persons receive competent legal assistance at all stages of the judicial proceedings, including free-of-charge assistance, without discrimination, particularly where imprisonment or the death penalty is a possible sentence.

[4] See Committee on the Rights of the Child, general comment No. 10 (2007) on children's right in juvenile justice.

68. States should incorporate, where possible, and in consultation with minority communities, aspects of the cultural, religious, linguistic or other characteristics of the minority communities in culturally sensitized courts, proceedings and programmes. In the absence of such courts, States should ensure that the cultural background of the accused, victims and witnesses are appropriately recognized, respected and accommodated by the authorities throughout the conduct of proceedings within the justice system.

69. States should ensure availability of interpretation services for accused minority persons not fluent in the language of the court, enabling such persons to use their own language. In the case of numerically significant minorities with historical ties, States should recognize the right of such members to have proceedings conducted in their native language.

70. States should ascertain whether direct or indirect discrimination arises from laws, policies or practices that appear neutral but in practice have a disparate impact upon members of minority groups. This should include particular examination of the application of mandatory sentencing laws on particular communities and the imposition of harsher penalties or undue delays in sentencing or in the execution of sentences. States should identify any role that direct or indirect discrimination plays in that regard and, where discovered, should take measures aimed at providing full remedies and redress.

71. There has been evidence that in some countries the death penalty is imposed and carried out more frequently against persons belonging to minority groups. This fact should be considered by States as an additional, decisive argument in favour of the abolishment of capital punishment.

72. In countries that have not abolished the death penalty, States should ensure that it is not applied as a result of discriminatory or arbitrary application of the law, including the lack of the provision of equal access to competent legal assistance and the hindering of the exercise of the rights to appeal against their sentence and to seek pardon or commutation on an equal basis with the majority prison population. States should implement safeguards guaranteeing protection of the rights of those facing the death penalty. States should undertake further studies to identify the underlying factors of the substantial racial and ethnic disparities in the application of the death penalty, with a view to developing effective strategies aimed at eliminating discriminatory practices.

73. In accordance with the Convention on the Rights of the Child, States shall never impose the death penalty on children, including minority children. States should discontinue any punishments that are mentally or physically damaging to children, including corporal punishment and life imprisonment without the possibility of parole.

74. States should ensure that in adjudication and sentencing processes for minority children, children's rights and fair trial guarantees are applied without discrimination. Regardless of the child's background, sex or origin, sentencing should always comply with the best interest of the child. States should adopt appropriate measures, including legislative measures, to ensure that adjudicating bodies secure minority children's participation in court processes, ensuring that any sentence is clearly communicated by a judge or magistrate in a language they can understand.

V. Essential measures to prevent discrimination against minorities in the administration of justice

A. Education, training and capacity-building

75. Compulsory training, education and capacity-building of law enforcement and judicial officials in human rights and minority rights, emphasizing the principle of non-discrimination and cultural sensitivity, is crucial in ensuring a fair and effective justice system, designed to foster tolerance, respect for diversity and integration of a gender perspective in all its aspects. It involves production of manuals and codes of conduct on policing and the administration of justice in a multicultural environment, accompanied by the establishment of appropriate structures to enforce compliance. Training and education material should be designed and delivered with the meaningful participation of minorities.

76. States should not limit their efforts to the delivery of isolated and ad hoc human rights training, rather they should invest in broader, coherent and ongoing educational, training and capacity-building efforts in order to develop clarity, depth and understanding of the human rights of minorities.

77. States should design and implement effective strategies for all police officials to become more responsive to the communities they serve. To this end, States should implement educational programmes that have proved successful in reducing the occurrence of discriminatory practices in police operations, including through evidence-based training that offers a framework for developing a coherent approach and through the application of tested scientific concepts and standards that link evidence with effectiveness in crime prevention.

78. States should consider reviewing curricula and teaching manuals for the legal profession, including for judges, prosecutors, lawyers and police academies, to ensure that they emphasize the need and techniques designed for an inclusive and fully functioning justice system. A variety of human rights topics, including minority rights, that are directly relevant to the work of judiciary should become an integrated part of all legal education.

B. Community engagement

79. States should establish mechanisms and mandate policies and practices to ensure dialogue and consultation with and participation of minorities in assisting States in understanding the situation of minorities, their issues and concerns when confronted with the criminal justice system. Such engagement will promote their full and equal access to the criminal justice system, enable improvements in its efficacy and take significant steps towards building trust. States should consider undertaking community-oriented initiatives to bring State officials and minorities together to work for the safety of minority communities and to ensure adherence to non-discrimination in the administration of justice, dialogue and partnership and in advancing the engagement of State officials with minority communities.

80. Police forces should collaborate with minorities at the local level to establish permanent liaison mechanisms with minority communities to jointly develop local strategies to review and revise relevant policies and practices, keeping channels of communication open contributing to the building of mutual trust.

81. States should promote community policing as a strategic complement to traditional policing practices, establishing police-public partnerships, where police agencies, relevant government agencies and minority communities actively cooperate in problem-solving. A

central element for community policing is the level of minority communities' participation. Adding accountability systems to evidence-based policing make police more inclined to work with minority communities.

C. Improving diversity throughout the system

82. The overrepresentation of minorities as perpetrators within the criminal justice can be challenged by the removal of obstacles to their participation in the administration of justice. Adopting inclusive strategies as part of an overall government policy for the promotion and protection of minority rights will multiply broader initiatives aimed at valuing diversity in society. Coherent and comprehensive minority policies require meaningful consultation that address the particular needs and circumstances of minorities in a given society, with their full and equal participation in all aspects of life of the State contributing to greater harmony and security.

83. States should ensure that the composition of law enforcement bodies at the local, regional and national levels reflect the diversity of the population. That requires concerted strategies, including legislative and administrative initiatives, organizational policies and processes to increase recruitment of women and men from underrepresented minorities from junior to senior ranks. That necessitates the removal of direct or indirect discriminatory barriers that hinder recruitment, retention and vertical mobility of minorities in police forces.

84. States should ensure that law enforcement patrols include the deployment of female officers and other personnel who, where possible, are trained in dealing with women who may be victims of sexual or other forms of gender-based violence. The role of minority women in police-community partnerships should not be underestimated and mixed patrol teams assist in creating cohesive relations between police and minority communities.

85. Experience in many countries has shown that legislation to outlaw discrimination and foster equality of opportunity has limited impact on patterns of recruitment and promotion of minorities in established State agencies. States should assess the composition of each relevant State agency, collecting and analysing figures disaggregated by gender, position type (junior/senior) and geographical location.

86. States should adopt a wide range of positive actions to overcome barriers of all kinds, including structural discrimination, that obstruct the recruitment, promotion and retention of male and female members of minorities in the police, the judiciary, prosecution services, the legal profession and prison personnel.

87. Adopting proactive recruitment strategies in minority areas contributes to the removal of formal and informal barriers to the recruitment, retention and vertical mobility of minorities. Those strategies need to include the removal of physical and/or educational requirements that exclude minorities; the elimination of culturally exclusive and antagonistic practices and emblems that contribute to a feeling of isolation; or actions to reduce or eliminate derogatory, discriminatory and stereotypical attitudes in the workplace. Practical and realistic targets with fixed timelines for achieving appropriate levels of participation in security, policing and justice agencies should be set, with such measures developed in consultation with minority groups and existing minority staff members.

88. States should encourage measures to increase the recruitment of minority officers and administrators, with the aim of building a diverse workforce in detention facilities, in particular in contexts where minorities are overrepresented in prison populations and detention personnel are largely culturally, linguistically or ethnically from the dominant group in society.

D. Independent oversight accountability and integrity mechanisms

89. States should guarantee independent oversight and accountability mechanisms, by ensuring independent examination of policies, programmes, recruitment practices and other policing and security activities as a crucial element to upholding integrity, preventing and deterring misconduct, and restoring or increasing public confidence in the justice system and as an indispensable element of the rule of law.

90. States should develop a specific code of conduct for court personnel to help reinforce ethical and non-discrimination standards and to promote a culture of integrity throughout the criminal justice system, including within the court system. Codes of conduct should not simply articulate rules, but should foster the development of an ethical, efficient and impartial staff.

91. States should establish independent and effective mechanisms or dedicated institutions with the mandate and technical capacity to receive and adjudicate complaints of unlawful discrimination on the basis of race, colour, national origin, religion, age, sex, sexual orientation, disability, gender identity or any other characteristic or status in the criminal justice system. They should be able to remedy direct or indirect discriminatory effects on the victim(s) and others, where appropriate. Retaliation against a person who files a complaint, serves as a witness, assists or participates in any manner in this procedure should be explicitly prohibited by law and result in prosecution and in disciplinary action when appropriate. Such mechanisms and institutions should be fully accessible to persons or groups belonging to minorities.

92. States should establish internal and external oversight mechanisms that should be given a range of powers, including the mandate to receive complaints about police abuse, conduct self-initiated investigations of allegations of police abuse, refer cases for internal police discipline, refer cases to the public prosecutor, impose disciplinary measures, conduct broader studies on police conduct and/or propose police service reforms to the police or the government. Oversight mechanisms should be provided with sufficient power to perform their tasks independently, be adequately resourced, function with the support of the public and the governance bodies, operate transparently making their reports public and including members of minorities in all its aspects.

93. In order to preserve and enhance police integrity, States must make sure that an effective internal disciplinary system is applied in a fair way as a means to prevent discriminatory behaviour within the police force. If misconduct occurs, it needs proper investigation and correction, including by addressing the underlying causes of wrongdoings. That requires challenging the persistence of a police codes of silence which defeat transparency and accountability, act against independent internal and external complaints system, and erode trust between minorities and the police, undermining the creation of safer and fairer societies.

VI. Recommendations for non-State actors

94. States commitment to combating bias and discrimination in the criminal justice system requires a multi-stakeholder approach, including civil society, minority communities, religious leaders, national human rights institutions and political leaders.

95. National human rights institutions should be representative of the diversity in their respective community and should seek to create dedicated oversight mechanisms, allocating appropriate resources and expertise to systematically assess and report on the situation of minorities within the criminal justice process, focusing on the behaviour of the police, the

judiciary, prosecutors and legal professionals, taking action where they observe discrimination.

96. National human rights institutions should monitor the number of complaints received from persons belonging to minorities in the context of criminal justice processes, reviewing their outcomes to assess whether complainants are adequately aware of their rights, and enjoy access to available formal justice mechanisms, without fear of reprisals, and design their work plans and outreach and information strategies accordingly.

97. Independent professional associations for judges, prosecutors and lawyers should provide guidance and training on minority rights, including on implicit bias and indirect discrimination, while ensuring proper representation of minorities within their own organizations. Disciplinary consequences and remedial measures should follow when discrimination against minorities is practiced in these contexts.

98. Political leaders should publicly challenge discrimination while refraining from making statements linking religion, nationality, language, race or ethnicity to criminal behaviour, irregular migration or terrorism. Political parties should refrain from spreading inflammatory and racist rhetoric, ensuring that public discourse does not perpetrate stereotypical, racist, hateful or discriminatory views about specific minority groups. Effective action against such discourse would ensure the sanctity of the public space, and would, over time, foster society-wide debate, building trust and confidence.

99. Civil society organizations should systematically engage with relevant stakeholders to contribute to the eradication of unlawful discriminatory practices and attitudes by law enforcement agencies and/or the judiciary, including by addressing accountability and access to justice for minorities more effectively. Civil society organizations should cooperate with minority groups and developing dedicated initiatives focusing on the identified problem areas.

100. Civil society organizations, including minority organizations, should be valued as trusted partners in guaranteeing the promotion and protection of minority rights within law enforcement and the judiciary, strengthening efforts in data collection initiatives and monitoring the performance of the criminal justice system.

101. Civil society organizations should advocate for police agencies to develop clear or improved written policies regarding how to record discriminatory practices by law enforcement agencies and/or the judiciary and should offer advice on procedures that will overcome obstacles that prevent minority victims from accessing justice and redress. Civil society organizations should support, minority individuals who have been victims of discrimination at any stage of the criminal justice process.

102. Civil society organizations should play a role in facilitating and supporting initiatives aimed at building a positive relationship between minority communities and the police, including by improving mutual understanding and trust. This could extend to supporting the implementation of police efforts to making stop and search more intelligence-led and effective by providing opportunities for members of the public, including minority communities to accompany police office on patrol.

103. Civil society organizations should identify and disseminate good practice adopted at the international, regional and/or national levels with a view to reducing inequalities and eliminating discrimination against minorities in the criminal justice system.

104. The mass media, including social media, play an important role in the construction of public knowledge about crime and justice. The public's perception of victims, criminals, witnesses and law enforcement officials is largely determined by their portrayal in the mass media. Public and private media bodies should be challenged if they present negative stereotypes of minority groups as criminals, violent, untrustworthy, disloyal, alien or dirty

or nurture inaccurate or false assumptions, opinions or generalizations on the supposed criminal tendency of a specific minority group that may develop into entrenched discriminatory attitudes and prejudices.

105. Media outlets should adopt codes of ethics and conduct for the exercise and promotion of ethical standards and be accessible in different minority languages. The participation of minority professionals in media outlets in all roles and at all levels, as well as of independent media monitoring bodies, is essential to ensure the objective and non-stereotypical portrayal of minorities. Media outlets should implement programmes to train, recruit and support media workers belonging to minority groups. They should also consider identifying focal points on minority issues in mass media and build their capacity on minority rights related issues.

VII. Recommendations for international and regional organizations

106. Relevant United Nations bodies, mechanisms and specialized agencies should support Governments in identifying manifestations of implicit or explicit bias and discrimination in police operations and the administration of justice, submitting concrete recommendations and proposals for improvement, including legislative and/or constitutional reforms. In particular, international bodies that monitor detention, including the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Committee against Torture, should actively consider minority issues in their work and include minorities in their membership.

107. United Nations bodies, mechanisms and specialized agencies should utilize existing United Nations system initiatives and policy frameworks, including the 2030 Agenda for Sustainable Development and the Rights Up Front initiative, to contribute to strengthening the United Nations system's ability to effectively prevent and respond to the complex situations with which minorities are confronted in the criminal justice system. To that end, the work of the United Nations network on racial discrimination and the protection of minorities should continue to be supported and expanded.

108. UNODC should consider adopting a specific focus on diversity and the rights of minorities in the criminal justice system as a thematic priority within programmes and projects on crime prevention and criminal justice.

109. United Nations country teams working in the administration of justice reform processes, including security sector and police reforms should establish dedicated country-specific structures for minorities.

110. International and regional organizations should make consolidated and integrated efforts to review and support the activities of national institutions that play a key role in combating institutional racism and discrimination and reforming the criminal justice system, for example by providing States with legal assistance in reviewing criminal legislation, including in order to make racial and other forms of discrimination an aggravating factor in criminal cases, to support, through mentoring and capacity-building, the investigation, prosecution and sentencing of persons who have committed racist or other discriminatory acts and to support research and data-gathering to inform policymaking processes.

111. International and regional organizations should assist States in designing and implementing independent oversight and accountability mechanisms for the police, the judiciary and detention facilities in accordance with United Nations standards and norms

and other relevant international and regional instruments, with a view to advancing full equality before the law without any discrimination.

112. International and regional organizations should support national justice and/or security sector reform plans that encourage the recruitment of male and female law enforcement officers, prosecutors, judges, lawyers and other personnel from minority groups, providing adequate training on minority rights where necessary.

113. International and regional organizations should provide technical assistance and capacity-building for national, local and grassroots organizations to improve their reporting, research and advocacy in the field of minority rights. That could include training on data-gathering strategies or other quantitative tools that could assist organizations' advocacy in influencing States' policymaking, in order to prevent and address discrimination or abuse against minorities throughout the criminal justice system.